

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 6243**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 63101 (MCL 324.63101), as amended by 1997 PA
149, and by adding section 63110 and part 632.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 63101. As used in this part:

2 (a) "Administratively complete" means an application for a
3 mining permit under this part that is determined by the
4 department to satisfy all of the conditions of this part and
5 rules promulgated under this part.

6 (b) "Department" means the department of environmental
7 quality.

8 (c) "Life of the mine" means the period of time from issuance
9 of a permit under this part through the completion of reclamation
10 as required by this part.

1 (d) "Metallic mineral" means ~~metallic~~ **ferrous** ore or
2 material mined for its ~~metallic~~ **ferrous** content.

3 (e) "Metallic mineral operator" means a person who owns or
4 leases the plant and equipment utilized in a metallic mineral
5 mining area and is engaged in the business of mining metallic
6 minerals or preparing to engage in mining operations for metallic
7 minerals.

8 (f) "Metallic product" means a commercially salable metallic
9 mineral in its final marketable form or state.

10 (g) "Mineral" means any substance to be excavated from the
11 natural deposits on or in the earth for commercial, industrial,
12 or construction purposes, including gypsum, limestone, dolostone,
13 sandstone, shale, metallic mineral, or other solid materials.
14 ~~Mineral~~ **However, mineral** does not include clay, gravel, marl,
15 peat, inland sand or sand mined for commercial or industrial
16 purposes, from sand dune areas regulated under part 637, ~~or~~
17 coal regulated under part 635, **or nonferrous metallic mineral**
18 **regulated under part 632.**

19 (h) "Mining area" or "area subjected to mining" means an area
20 of land from which material is removed in connection with the
21 production or extraction of minerals by surface or open pit
22 mining methods, the lands on which material from that mining is
23 deposited, the lands on which beneficiating or treatment plants
24 and auxiliary facilities are located, the lands on which the
25 water reservoirs used in the mining process are located, and
26 auxiliary lands which are used.

27 (i) "Operator" means a metallic mineral operator or other

1 persons engaged in or preparing to engage in mining operations
2 for the production of mineral products.

3 (j) "Stockpile" means material, including, but not limited
4 to, surface overburden, rock, or lean ore, which in the process
5 of **mineral** mining and beneficiation or treatment has been removed
6 from the earth and stored on the surface, but excluding materials
7 that are being treated in the production of mineral products and
8 the mineral product that has been produced by that operation.

9 (k) "Supervisor of reclamation" means the state geologist.

10 (l) "Surface or open pit mining" means the mining of more
11 than 10,000 tons of a mineral or disturbing more than 1 acre of
12 land a year in the regular operation of a business by removing
13 the overburden lying above a natural deposit of a mineral and
14 mining directly from the natural deposit exposed or by mining
15 directly from a deposit lying exposed in the mineral's natural
16 state. Surface or open pit mining includes all **mineral** mining
17 below the water table or which will upon cessation of mining
18 result in creating a body of water of any size. Surface or open
19 pit mining does not include excavation or grading preliminary to
20 a construction project.

21 (m) "Tailings basin" means land on which is deposited, by
22 hydraulic or other means, the material that is separated from the
23 mineral product in the beneficiation or treatment of minerals
24 including any surrounding dikes constructed to contain the
25 material.

26 **Sec. 63110. This part does not apply to activities subject**
27 **to part 632.**

PART 632 NONFERROUS METALLIC MINERAL MINING

Sec. 63201. As used in this part:

(a) "Administratively complete" means an application for a mining permit under this part that is determined by the department to contain all of the documents and information required under this part and any rules promulgated under this part.

(b) "Affected area" means an area outside of the mining area where the land surface, surface water, groundwater, or air resources are determined through an environmental impact assessment to be potentially affected by mining operations within the proposed mining area.

(c) "Department" means the department of environmental quality.

(d) "Emergency management coordinator" means that term as defined in section 2 of the emergency management act, 1976 PA 390, MCL 30.402.

(e) "Fund" means the nonferrous metallic mineral surveillance fund created in section 63217.

(f) "Metallic product" means a commercially salable mineral produced primarily for its nonferrous metallic mineral content in its final marketable form or state.

(g) "Mining" means the excavation or removal of more than 10,000 tons of earth material a year or disturbing more than 1 acre of land a year in the regular operation of a business for the purpose of extracting a nonferrous metallic mineral or minerals by 1 or both of the following:

1 (i) Removing the overburden lying above natural deposits of a
2 mineral and excavating directly from the natural deposits thus
3 exposed or by excavating directly from deposits lying exposed in
4 their natural state.

5 (ii) Excavating from below the surface of the ground by means
6 of shafts, tunnels, or other subsurface openings.

7 (h) "Mining area" means an area of land from which earth
8 material is removed in connection with nonferrous metallic
9 mineral mining, the lands on which material from that mining is
10 stored or deposited, the lands on which beneficiating or
11 treatment plants and auxiliary facilities are located, the lands
12 on which the water reservoirs used in the nonferrous metallic
13 mineral mining process are located, and auxiliary lands that are
14 used in connection with the mining.

15 (i) "Mining permit" means a permit issued under this part for
16 conducting nonferrous metallic mineral mining and reclamation
17 operations.

18 (j) "Nonferrous metallic mineral" means any ore or material
19 to be excavated from the natural deposits on or in the earth for
20 its metallic content, but not primarily for its iron or iron
21 mineral content, to be used for commercial or industrial
22 purposes.

23 (k) "Nonferrous metallic mineral operator" or "operator"
24 means a permittee or other person who is engaged in, or who is
25 preparing to engage in, mining operations for nonferrous metallic
26 minerals, whether individually or jointly, or through agents,
27 employees, or contractors.

1 (l) "Permittee" means a person who holds a mining permit.

2 (m) "Postclosure monitoring period" means a period following
3 closure of a nonferrous metallic mineral mine during which the
4 permittee is required to conduct monitoring of groundwater and
5 surface water.

6 (n) "Stockpile" means material, including, but not limited
7 to, surface overburden, rock, or lean ore, that in the process of
8 mining and beneficiation or treatment has been removed from the
9 earth and stored on the surface. Stockpile does not include
10 materials that are being treated in the production of metallic
11 products and the metallic product that has been produced by that
12 operation.

13 (o) "Tailings basin" means land on which is deposited, by
14 hydraulic or other means, the material that is separated from the
15 metallic product in the beneficiation or treatment of minerals
16 including any surrounding dikes constructed to contain the
17 material.

18 Sec. 63202. The legislature finds that:

19 (a) It is the policy of this state to foster the conservation
20 and development of the state's natural resources.

21 (b) Discoveries of nonferrous metallic sulfide deposits have
22 resulted in intensive exploration activities and may lead to the
23 development of 1 or more mines.

24 (c) Nonferrous metallic sulfide deposits are different from
25 the iron oxide ore deposits currently being mined in Michigan in
26 that the sulfide minerals may react, when exposed to air and
27 water, to form acid rock drainage. If the mineral products and

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1 waste materials associated with nonferrous metallic sulfide
2 mining operations are not properly managed and controlled, they
3 can cause significant damage to the environment, impact human
4 health, and degrade the quality of life of the impacted
5 community.

6 (d) The special concerns surrounding nonferrous metallic
7 mineral mining warrant additional regulatory measures beyond
8 those applied to the current iron mining operations.

9 (e) Nonferrous metallic mineral mining may be an important
10 contributor to Michigan's economic vitality. The economic
11 benefits of nonferrous metallic mineral mining shall occur only
12 under conditions that assure that the environment, natural
13 resources, and public health and welfare are adequately
14 protected.

15 Sec. 63203. (1) The department shall administer and enforce
16 this part <<in order to regulate nonferrous metallic mineral mining>>.
17 In addition to other powers granted to it, the
18 department may promulgate rules it considers necessary to carry
19 out its duties under this part, including standards for
20 construction, operation, closure, postclosure monitoring,
21 reclamation, and remediation of a nonferrous metallic mineral
22 mine. However, the department shall not promulgate any
23 additional rules under this part after December 31, 2005.

24 (2) The department may do either of the following:

25 (a) Enter at all reasonable times in or upon a mining area
26 for the purpose of inspecting and investigating conditions
27 relating to the operation of a mining area. <<However, an investigation
or inspection under this subsection shall comply with the United States
constitution, the state constitution of 1963, and this section.>>

(b) Conduct research or enter into contracts related to

1 mining areas and the reclamation of mining areas as may be
2 necessary to implement this part.

3 (3) Subject to subsections (4) and (5), a local unit of
4 government shall not regulate or control mining or reclamation
5 activities that are subject to this part, including construction,
6 operation, closure, postclosure monitoring, reclamation, and
7 remediation activities, and does not have jurisdiction concerning
8 the issuance of permits for those activities.

9 (4) A local unit of government may enact, maintain, and
10 enforce ordinances, regulations, or resolutions affecting mining
11 operations if the ordinances, regulations, or resolutions do not
12 duplicate, contradict, or conflict with this part. In addition,
13 a local unit of government may enact, maintain, and enforce
14 ordinances, regulations, or resolutions regulating the hours at
15 which mining operations may take place and routes used by
16 vehicles in connection with mining operations. However, such
17 ordinances, regulations, or resolutions shall be reasonable in
18 accommodating customary nonferrous metallic mineral mining
19 operations.

20 (5) Subsections (3) and (4) do not prohibit a local unit of
21 government from conducting water quality monitoring.

22 Sec. 63205. (1) A person shall not engage in the mining of
23 nonferrous metallic minerals except as authorized in a mining
24 permit issued by the department.

25 (2) An application for a mining permit shall be submitted to
26 the department in a format to be developed by the department.
27 The application shall be accompanied by all of the following:

1 (a) A permit application fee of \$5,000.00. The department
2 shall forward all permit application fees received under this
3 section to the state treasurer for deposit in the fund.

4 (b) An environmental impact assessment for the proposed
5 mining operation that describes the natural and human-made
6 features, including, but not limited to, flora, fauna, hydrology,
7 geology, and geochemistry, and baseline conditions in the
8 proposed mining area and the affected area that may be impacted
9 by the mining, and the potential impacts on those features from
10 the proposed mining operation. The environmental impact
11 assessment shall define the affected area and shall address
12 feasible and prudent alternatives.

13 (c) A mining, reclamation, and environmental protection plan
14 for the proposed mining operation, including beneficiation
15 operations, that will reasonably minimize the actual and
16 potential adverse impacts on natural resources, the environment,
17 and public health and safety within the mining area and the
18 affected area. The plan shall address the unique issues
19 associated with nonferrous metallic mining and shall include all
20 of the following:

21 (i) A description of materials, methods, and techniques that
22 will be utilized.

23 (ii) Information that demonstrates that all methods,
24 materials, and techniques proposed to be utilized are capable of
25 accomplishing their stated objectives in protecting the
26 environment and public health, except that such information may
27 not be required for methods, materials, and techniques that are

1 widely used in mining or other industries and are generally
2 accepted as effective. The required information may consist of
3 results of actual testing, modeling, documentation by credible
4 independent testing and certification organizations, or
5 documented applications in similar uses and settings.

6 (iii) Plans and schedules for interim and final reclamation
7 of the mining area following cessation of mining operations.

8 (iv) A description of the geochemistry of the ore, waste
9 rock, overburden, peripheral rock, and tailings, including
10 characterization of leachability and reactivity.

11 (v) Provisions for the prevention, control, and monitoring of
12 acid-forming waste products and other waste products from the
13 mining process so as to prevent leaching into groundwater or
14 runoff into surface water.

15 (d) A contingency plan that includes an assessment of the
16 risk to the environment or public health and safety associated
17 with potential significant incidents or failures and describes
18 the operator's notification and response plans. When the
19 application is submitted to the department, the applicant shall
20 provide a copy of the contingency plan to each emergency
21 management coordinator having jurisdiction over the affected
22 area.

23 (e) Financial assurance as described in section 63211.

24 (f) A list of other state and federal permits that are
25 anticipated to be required.

26 (3) The applicant has the burden of establishing that the
27 terms and conditions set forth in the permit application; mining,

1 reclamation, and environmental protection plan; and environmental
2 impact assessment will result in a mining operation that
3 reasonably minimizes actual or potential adverse impacts on air,
4 water, and other natural resources and meets the requirements of
5 this act.

6 (4) Effective 14 days after the department receives an
7 application for a mining permit, the application shall be
8 considered to be administratively complete unless the department
9 proceeds as provided under subsection (5).

10 (5) If, before the expiration of the 14-day period under
11 subsection (4), the department notifies the applicant that the
12 application is not administratively complete, specifying the
13 information necessary to make the application administratively
14 complete, or notifies the applicant that the fee required to
15 accompany the application has not been paid, specifying the
16 amount due, the running of the 14-day period under subsection (4)
17 is tolled until the applicant submits to the department the
18 specified information or fee amount due. The notice shall be
19 given in writing or electronically.

20 (6) Within 42 days after an application for a mining permit
21 is determined to be administratively complete, the department
22 shall hold a public meeting on the application. The department
23 shall give notice of the public meeting not less than 14 or more
24 than 28 days before the date of the public meeting. The notice
25 shall specify the time and place of the public meeting, which
26 shall be held in the county where the proposed mining operation
27 is located, and shall include information on how to review a copy

1 of the application. The notice shall be given in writing to the
2 city, village, or township and the county where the proposed
3 mining operation is to be located and to all affected federally
4 recognized Indian tribes in this state. The notice shall also be
5 given by publication in a newspaper of local distribution in the
6 area where the proposed mining operation is to be located.

7 (7) The department shall accept written public comment on the
8 permit application for 28 days following the public meeting under
9 subsection (6). Within 28 days after the expiration of the
10 public comment period, the department shall reach a proposed
11 decision to grant or deny a mining permit and shall establish a
12 time and place for a public hearing on the proposed decision.
13 The department shall give notice of the public hearing not less
14 than 14 or more than 28 days before the date of the public
15 hearing. The notice shall be given in writing to the city,
16 village, or township and the county where the proposed mining
17 operation is to be located and to all affected federally
18 recognized Indian tribes in this state. The notice shall also be
19 given by publication in a newspaper of local distribution in the
20 area where the proposed mining operation is to be located. The
21 notice shall contain all of the following:

22 (a) A summary of the permit application.

23 (b) Information on how to review a complete copy of the
24 application. The application shall be made available at a public
25 location in the area.

26 (c) A listing of other permits and hearings that are pending
27 or anticipated under this act with respect to the proposed mining

1 operation.

2 (d) The time and place of the public hearing, which shall be
3 held in the area where the proposed mining operation is located.

4 (8) The department shall accept written public comment on the
5 proposed decision to grant or deny a mining permit for 28 days
6 following the public hearing. At the expiration of the public
7 comment period, the department shall issue a report summarizing
8 all comments received and providing the department's response to
9 the comments.

10 (9) Within 28 days after the expiration of the public comment
11 period under subsection (8), the department shall grant or deny
12 the mining permit application in writing. A determination that
13 an application is administratively complete does not preclude the
14 department from requiring additional information from the
15 applicant. The 28-day period under this subsection shall be
16 tolled until such time as the applicant submits the requested
17 information. If a mining permit is denied, the reasons shall be
18 stated in a written report to the applicant.

19 (10) A mining permit shall not be issued or transferred to a
20 person if the department has determined that person to be in
21 violation of this part, rules promulgated under this part, the
22 permit, or an order of the department under this part, unless the
23 person has corrected the violation or the person has agreed in
24 writing to correct the violation pursuant to a compliance
25 schedule approved by the department.

26 (11) Subject to subsection (10), the department shall approve
27 a mining permit if it determines both of the following:

1 (a) The permit application meets the requirements of this
2 part.

3 (b) The proposed mining operation will not pollute, impair,
4 or destroy the air, water, or other natural resources or the
5 public trust in those resources, in accordance with part 17 of
6 this act. In making this determination, the department shall
7 take into account the extent to which other permit determinations
8 afford protection to natural resources. For the purposes of this
9 subsection, excavation and removal of nonferrous metallic
10 minerals and of associated overburden and waste rock, in and of
11 itself, does not constitute pollution, impairment, or destruction
12 of those natural resources.

13 (12) The department shall deny a mining permit if it
14 determines the requirements of subsection (11) have not been
15 met.

16 (13) Terms and conditions that are set forth in the permit
17 application and the mining, reclamation, and environmental
18 protection plan and that are approved by the department shall be
19 incorporated in and become a part of the mining permit.

20 (14) A mining permit is not effective until all other permits
21 required under this act for the proposed mining operation are
22 obtained.

23 (15) If a person submits an application for a mining permit
24 and 1 or more other permits under this act with respect to a
25 particular mining operation, the department may process the
26 applications in a coordinated fashion to the extent feasible
27 given procedural requirements applicable to individual permits.

1 The coordinated permit process may include consolidating public
2 hearings under this part with public hearings required under
3 other parts of this act. Any notice of a consolidated public
4 hearing shall state clearly which permits are to be considered at
5 the public hearing. An applicant may waive any required
6 timelines under subsections (4) to (9) to facilitate the
7 coordination.

8 Sec. 63207. (1) A mining permit issued by the department
9 shall remain in effect until terminated or revoked by the
10 department.

11 (2) The department may terminate a mining permit under 1 or
12 more of the following conditions:

13 (a) The permittee has not commenced construction of plant
14 facilities or conducted actual mining activities covered by the
15 mining permit within 2 years after the effective date of the
16 mining permit.

17 (b) The permittee has completed final reclamation of the
18 mining area and requests the termination of the mining permit and
19 the department determines all of the following:

20 (i) The mining operation has not polluted, impaired, or
21 destroyed the air, water, or other natural resources or the
22 public trust in those resources by activities conducted within
23 the scope of the permit.

24 (ii) The permittee has otherwise fulfilled all conditions
25 determined to be necessary by the department to protect the
26 public health, safety, and welfare and the environment.

27 (iii) The requirements for the postclosure monitoring period

1 have been satisfied.

2 (3) The department may revoke a mining permit pursuant to
3 section 63221.

4 (4) A mining permit may be transferred to a new operator with
5 approval of the department after public notice as follows:

6 (a) The person acquiring the mining permit shall submit to
7 the department on forms provided by the department a request for
8 transfer of the mining permit and shall provide the financial
9 assurance required under section 63211.

10 (b) The person acquiring the mining permit shall accept the
11 conditions of the existing mining permit and adhere to the
12 requirements set forth in this part.

13 (c) If the permittee is determined by the department to be in
14 violation of this part or the rules promulgated under this part
15 at the mining site involved in the transfer, then the mining
16 permit shall not be transferred to a person until the permittee
17 has completed the necessary corrective actions or the person
18 acquiring the mining permit has entered into a written consent
19 agreement to correct all of the violations.

20 (5) Pending the transfer of an existing mining permit under
21 subsection (4), the proposed transferee shall not operate the
22 mine.

23 (6) A mining permit may be amended as follows:

24 (a) The permittee may submit to the department a request to
25 amend the mining permit to address anticipated changes in the
26 mining operation, including, if applicable, amendments to the
27 environmental impact assessment and to the mining, reclamation,

1 and environmental protection plan.

2 (b) The department may require a mining permit to be amended
3 if the department determines that the terms and conditions of the
4 mining permit are not providing the intended reasonable
5 protection of the environment, natural resources, or public
6 health and safety.

7 (c) Within 30 days after receiving a request to amend a
8 mining permit, or upon a determination by the department that an
9 amendment is necessary, the department shall determine within 30
10 days whether the request constitutes a significant change from
11 the conditions of the approved mining permit. If the department
12 determines that the request is a significant change from the
13 conditions of the approved mining permit, the department may
14 submit the request for amendment to the same review process as
15 provided for a new permit application in section 63205(4) to
16 (9). If a request to amend the mining permit is denied, the
17 reasons for denial shall be stated in a written report to the
18 permittee. If the department determines that the request for
19 amendment does not constitute a significant change from the
20 conditions of the approved mining permit, the department shall
21 provide written notice of the determination to the city, village,
22 or township and the county where the proposed mining operation is
23 to be located and to all affected federally recognized Indian
24 tribes in this state. The department shall also give notice of
25 the determination by publication in a newspaper of local
26 distribution in the area where the proposed mining operation is
27 to be located. The department shall approve the amendment within

1 14 days after publication of the notice and shall notify the
2 permittee of the approval.

3 Sec. 63209. (1) A permittee shall comply with all other
4 applicable permit standards under this act.

5 (2) A permittee shall conduct reclamation activities at a
6 mining area in accordance with the approved mining, reclamation,
7 and environmental protection plan.

8 (3) If mining operations are suspended for a continuous
9 period exceeding 90 days, the permittee shall take actions to
10 maintain, monitor, and secure the mining area and shall conduct
11 any interim sloping or stabilizing of surfaces necessary to
12 protect the environment, natural resources, or public health and
13 safety in accordance with the permit.

14 (4) Subject to subsection (5), a permittee shall begin final
15 reclamation of a mining area within 3 years of the date of
16 cessation of mining operations and shall complete reclamation
17 within the time set forth in the mining, reclamation, and
18 environmental protection plan approved by the department.

19 (5) Upon written request of a permittee, the department may
20 approve an extension of time to begin or complete final
21 reclamation.

22 (6) A permittee shall conduct groundwater and surface water
23 monitoring in accordance with the provisions of the permit during
24 mining operations and during the postclosure monitoring period.
25 The postclosure monitoring period shall be 20 years following
26 cessation of mining, subject to the following conditions:

27 (a) The permittee shall provide to the department a written

1 request to terminate the postclosure monitoring not less than 18
2 months before the proposed termination date and shall provide the
3 department with technical data and information demonstrating the
4 basis for the termination. The department shall extend the
5 postclosure monitoring period in increments of up to 20 years
6 unless the department determines, approximately 1 year before the
7 end of a postclosure monitoring period or postclosure incremental
8 monitoring period, that there is no significant potential for
9 water contamination resulting from the mining operation.

10 (b) The department may shorten the postclosure monitoring
11 period at any time upon determining that there is no significant
12 potential for water contamination resulting from the mining
13 operation.

14 (7) The department may extend or shorten the postclosure
15 monitoring period under subsection (6) only after public notice
16 and opportunity for a public hearing under section 63219(2).

17 (8) Both the mining area and the affected area shall be
18 reclaimed and remediated to achieve a self-sustaining ecosystem
19 appropriate for the region that does not require perpetual care
20 following closure and with the goal that the affected area shall
21 be returned to the ecological conditions that approximate
22 premining conditions subject to changes caused by nonmining
23 activities or other natural events. Any portion of the mining
24 area owned by the applicant may be used for any legal purposes.

25 (9) Compliance with the provisions of this part does not
26 relieve a person of the obligation to comply with all other
27 applicable tribal, state, federal, or local statutes,

1 regulations, or ordinances.

2 Sec. 63211. (1) An operator shall maintain financial
3 assurance during mining operations until the department
4 determines that all reclamation has been completed and for a
5 postclosure monitoring period as determined under section
6 63209(6) and (7), except that financial assurance shall be
7 released immediately upon termination of a mining permit under
8 section 63207(2)(a).

9 (2) The financial assurance required under subsection (1)
10 shall apply to all mining and reclamation operations subject to
11 the mining permit and be sufficient to cover the cost to
12 administer, and to hire a third party to implement, reclamation
13 under the mining, reclamation, and environmental protection plan
14 as well as necessary environmental protection measures, including
15 remediation of any contamination of the air, surface water, or
16 groundwater that is in violation of the mining permit. The
17 financial assurance shall consist of a conformance bond, escrow,
18 cash, certificate of deposit, irrevocable letter of credit, or
19 other equivalent security, or any combination thereof, covering
20 at least 75% of the total required amount. Financial assurance
21 for the balance of the required total amount, if any, shall
22 consist of a statement of financial responsibility.

23 (3) Every 3 years, or as the department considers necessary,
24 a permittee shall update the statement of financial
25 responsibility required under subsection (2) and shall adjust the
26 conformance bond, escrow, cash, certificate of deposit,
27 irrevocable letter of credit, or other security, as applicable,

1 to assure that the financial assurance is sufficient for the
2 purposes of subsection (2).

3 (4) The financial assurance mechanism required by this
4 section may be satisfied in whole or in part by financial
5 assurance provisions required by other parts of this act if those
6 provisions address the remediation activities required under this
7 part.

8 (5) Failure to provide financial assurance under this
9 section constitutes grounds for the department to order immediate
10 suspension of activities at a mining operation, including the
11 removal of metallic product from the site, pursuant to section
12 63221.

13 Sec. 63213. (1) A permittee shall file with the department
14 a mining and reclamation report on or before March 15 of each
15 year, during the period the mine is operating and during the
16 postclosure monitoring period. The mining and reclamation report
17 shall contain all of the following:

18 (a) A description of the status of mining and reclamation
19 operations.

20 (b) An update of the contingency plan. The permittee shall
21 provide a copy of the update to the emergency management
22 coordinator.

23 (c) A report of monitoring results for the preceding calendar
24 year.

25 (d) A report of the total tons of material mined from the
26 mining area, and the amount of metallic product by weight,
27 produced from the nonferrous metallic mineral mine for the

1 preceding calendar year.

2 (e) A list of the reports required under subsection (2) for
3 the preceding calendar year.

4 (2) A permittee shall promptly notify the department and each
5 emergency management coordinator having jurisdiction over the
6 affected area of any incident, act of nature, or exceedance of a
7 permit standard or condition at a mining operation that has
8 created, or may create, a threat to the environment, natural
9 resources, or public health and safety.

10 (3) Records upon which the mining and reclamation reports are
11 based shall be preserved by the permittee for 3 years and made
12 available to the department upon request.

13 (4) Records upon which incident reports under subsection (2)
14 are based shall be preserved by the permittee for 3 years or
15 until the end of the postclosure monitoring period, whichever is
16 later.

17 Sec. 63215. (1) For purposes of surveillance, monitoring,
18 administration, and enforcement of this part, the department
19 shall assess a permittee a nonferrous metallic mineral
20 surveillance fee of not more than 5 cents per ton of material
21 mined from the mining area as reported under section 63213(1)(d),
22 but not less than \$5,000.00, for each calendar year the mine is
23 in operation and during the postclosure monitoring period.
24 Surveillance fees collected under this section shall be forwarded
25 to the state treasurer for deposit in the nonferrous metallic
26 mineral surveillance fund created in section 63217. The
27 surveillance fee rate shall be calculated each year as follows:

1 (a) The department shall determine the total tons of material
2 mined from mining areas in this state in the prior calendar
3 year.

4 (b) The department shall calculate the adjusted appropriation
5 by deducting any unexpended money in the fund at the close of the
6 prior fiscal year from the amount appropriated for the current
7 fiscal year for surveillance, monitoring, administration, and
8 enforcement of this part.

9 (c) The fee rate shall be the ratio, to the nearest 1/100 of
10 1%, of the adjusted appropriation to the total tons of material
11 mined.

12 (2) The nonferrous metallic mineral surveillance fee
13 described in subsection (1) is due by 30 days after the
14 department sends written notice to the permittee of the amount
15 due.

16 (3) A penalty equal to 10% of the amount due, or \$1,000.00,
17 whichever is greater, shall be assessed against the permittee for
18 a metallic mineral surveillance fee that is not paid when due.
19 The department may file an action in the circuit court for Ingham
20 county to collect the unpaid fee and penalty. The unpaid fee and
21 penalty shall constitute a debt and become the basis of a
22 judgment against the permittee.

23 (4) Penalties paid pursuant to this section shall be used for
24 the implementation, administration, and enforcement of this
25 part.

26 Sec. 63217. (1) The nonferrous metallic mineral
27 surveillance fund is created within the state treasury.

1 (2) The state treasurer may receive money or other assets
2 from any source for deposit into the fund. The state treasurer
3 shall direct the investment of the fund. The state treasurer
4 shall credit to the fund interest and earnings from fund
5 investments.

6 (3) Unexpended money in the fund at the close of the fiscal
7 year shall remain in the fund and be carried over to the
8 succeeding fiscal year.

9 (4) The department shall expend money from the fund, upon
10 appropriation, only for surveillance, monitoring, administration,
11 and enforcement under this part.

12 Sec. 63219. (1) A person who is aggrieved by an order,
13 action, or inaction of the department or by the issuance, denial,
14 revocation, or amendment of a mining permit under this part may
15 file a petition with the department requesting a contested case
16 hearing, under the administrative procedures act of 1969, 1969 PA
17 306, MCL 24.201 to 24.328. A petition filed more than 60 days
18 after an order, action, or inaction of the department or an
19 action on a mining permit may be rejected as being untimely.

20 (2) Any hearing under this part shall be held pursuant to the
21 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
22 24.328. The department shall provide notice of the hearing and
23 shall mail copies of the notice to the person requesting the
24 hearing and to the city, village, or township and the county
25 where the proposed mining operation is to be located and to all
26 affected federally recognized Indian tribes in this state. The
27 department shall publish notice of the hearing in a newspaper of

1 local distribution in the area of the mining operation at least
2 10 days before the hearing.

3 Sec. 63221. (1) If the department determines that an
4 operator has violated this part, a rule promulgated under this
5 part, or a mining permit issued under this part, the department
6 shall require the operator to correct the violation.

7 (2) If the department determines that a violation under
8 subsection (1) is causing or resulting in an imminent and
9 substantial endangerment to the public health or safety,
10 environment, or natural resources, the department shall take
11 action necessary to abate or eliminate the endangerment. Such
12 action may include 1 or more of the following:

13 (a) Revoking the mining permit.

14 (b) Issuing an order to the operator requiring immediate
15 suspension of activities at the mining operation, including the
16 removal of metallic product from the site.

17 (c) Issuing an order to the operator to undertake such other
18 response actions as may be necessary to abate or eliminate the
19 endangerment.

20 (3) Before taking action under this section to suspend
21 operations or revoke a mining permit, or to otherwise prevent the
22 continuation of mining operations, the department shall give
23 written notice, in person or by mail, to the operator. Subject
24 to subsection (4), the department shall provide the operator an
25 opportunity for an evidentiary hearing.

26 (4) If the department finds that emergency action is required
27 to protect the public health, safety, or welfare, or to protect

1 the environment, the department may issue an emergency order
2 without a public hearing to require an operator to suspend
3 operations or to take other corrective actions. An emergency
4 order shall remain in force and effect for not more than 21
5 days.

6 (5) If the operator or surety fails or neglects to correct
7 the violation or take corrective actions as specified under an
8 order of the department, the department may, after giving written
9 notice to the operator and surety, enter in or upon the mining
10 area and upon and across any private or public property necessary
11 to reach the mining area and take whatever action is necessary to
12 curtail and remediate any damage to the environment and public
13 health resulting from the violation, and the operator and surety
14 are jointly and severally liable for all expenses incurred by the
15 department. The claim shall be paid by the operator or surety
16 within 30 days, and, if the claim is not paid within that time,
17 the department may bring suit against the operator or surety,
18 jointly or severally, for the collection of the claim in any
19 court of competent jurisdiction. This part does not limit the
20 department's authority to take whatever response activities it
21 determines necessary to protect the public health, safety, and
22 welfare and the environment.

23 (6) The revocation of a mining permit or suspension of
24 activities under subsection (2) does not relieve a permittee of
25 the responsibility to complete reclamation, maintain financial
26 assurance required under section 63211, and undertake all
27 appropriate measures to protect the environment, natural

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1 resources, and public health and safety.

2 (7) If the department receives an allegation of improper
3 action under or a violation of this part, a rule promulgated
4 under this part, or a condition of a permit issued under this
5 part, and the person making the allegation provides evidence or
6 corroboration sufficient to support the allegation, as determined
7 by the department, the department shall do all of the following:

8 (a) Make a record of the allegation.

9 (b) Conduct an inspection of the mining operation to
10 investigate the allegation not more than 5 business days after
11 receipt of the complaint or allegation. If the complaint or
12 allegation is of a highly serious nature, as determined by the
13 department, the mining operation shall be inspected as quickly as
14 possible. <<However, an investigation or inspection under this
subsection shall comply with the United States constitution, the state
constitution of 1963, and this section.>>

15 (c) Not more than 15 business days after completing an
16 investigation of the allegation, make a written report of the
17 allegation and the results of the investigation to the operator
18 and the person who made the allegation.

19 (8) The department shall comply with the administrative
20 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in its
21 actions under this section.

22 Sec. 63223. (1) The department may request the attorney
23 general to commence a civil action for appropriate relief,
24 including a permanent or temporary injunction, for a violation of
25 this part or a provision of a permit or order issued or rule
26 promulgated under this part. An action under this subsection may
27 be brought in the circuit court for the county of Ingham or for

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1 the county in which the defendant is located, resides, or is
2 doing business. The court has jurisdiction to restrain the
3 violation and to require compliance. In addition to any other
4 relief granted under this subsection, the court may impose a
5 civil fine of not less than \$2,500.00, and the court may award
6 reasonable attorney fees and costs to the prevailing party. The
7 maximum fine imposed by the court shall be not more than
8 \$25,000.00 per day of violation.

9 (2) Upon a finding by the court that an operator has violated
10 this part or a provision of a permit or order issued or rule
11 promulgated under this part, and that the violation poses or
12 posed a substantial endangerment to the public health, safety, or
13 welfare, the court shall impose, in addition to the sanctions set
14 forth in subsection (1), a fine of not less than \$500,000.00 and
15 not more than \$5,000,000.00.

16 (3) The attorney general may file a civil suit in a court of
17 competent jurisdiction to recover, in addition to a fine, the
18 full value of the injuries done to the natural resources of this
19 state and the costs of surveillance and enforcement by the state
20 resulting from the violation.

21 (4) A person who<<, on or after February 1, 2005>> intentionally
22 makes a false statement,
23 representation, or certification in an application for or form
24 pertaining to a permit under this part or in a notice or report
25 required by the terms and conditions of a permit issued under
26 this part is guilty of a felony and may be imprisoned for not
27 more than 2 years and shall be fined not less than \$2,500.00 or
more than \$25,000.00 for each violation. If the conviction is

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1 for a violation committed after a first conviction of the person
2 under this subsection, the court shall impose a fine of not less
3 than \$25,000.00 per day and not more than \$50,000.00 per day of
4 violation. With the exception of the issuance of criminal
5 complaints, issuance of warrants, and the holding of an
6 arraignment, the circuit court for the county in which the
7 violation occurred has exclusive jurisdiction. Knowledge
8 possessed by a person other than the defendant under this
9 subsection may be attributable to the defendant if the defendant
10 took affirmative steps to shield himself or herself from the
11 relevant information.

12 (5) Upon a finding by the court that the actions <<taken by a
13 criminal defendant on or after February 1, 2005>> pose or posed a
14 substantial endangerment to
15 the public health, safety, or welfare, the court shall impose, in
16 addition to the penalties set forth in subsection (2), a sentence
17 of 5 years' imprisonment and a fine of not less than

18 (6) To find a defendant civilly or criminally liable for
19 substantial endangerment under subsection (2) or (5), the court
20 shall determine that the defendant knowingly or recklessly acted
21 in such a manner as to cause a danger of death or serious bodily
22 injury and that either of the following occurred:

23 (a) The defendant had an actual awareness, belief, or
24 understanding that his or her conduct would cause a substantial
25 danger of death or serious bodily injury.

26 (b) The defendant acted in gross disregard of the standard of
27 care that any reasonable person should observe in similar

1 circumstances.

2 (7) A civil fine or other civil award imposed under this
3 section is payable to this state and shall be credited to the
4 general fund. The fine constitutes a lien on any property, of
5 any nature or kind, owned by the defendant.

6 (8) A lien under subsection (7) is effective and has priority
7 over all other liens and encumbrances except those filed or
8 recorded prior to the date of judgment only if notice of the lien
9 is filed or recorded as required by state or federal law.

10 (9) A lien filed or recorded pursuant to subsection (8) shall
11 be terminated according to the procedures required by state or
12 federal law within 14 days after the fine or other award ordered
13 to be paid is paid.

14 (10) If a violation of this part also constitutes a violation
15 of another part of this act, a court may apply a civil fine or
16 penalty for the violation, and each day of continued violation,
17 in accordance with and subject to the penalty limits of the other
18 part.